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10/632,545

08/01/2003

Michael F. Brletich

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7590

10/19/2006

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EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/632,545

Applicant(s)

BRLETICH ET AL.

Examiner

Ernesto Garcia

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 11-16 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election of Species***

Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on 06/20/2005.

With regards to the withdrawal of amended claim 21, note that this claim is no longer readable on the elected species and generic. The claim requires the aperture engaging member 40 be located on a portion of the flexible extension member 26 extending between and within the space defined by the end cap 62 and a portion of the body 76 that is spaced farthest from the end cap 62. However, the aperture-engaging member 40 is not located as described on the claim. Applicant should note that the aperture-engaging member 40 is away from a portion of the body that is spaced farthest from the end cap 62 and not being between and within the spaced defined by the end cap and the portion of the body spaced farthest from the end cap.

***Claim Rejections - 35 USC § 102***

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Antonucci et al., 6,119,306.

Regarding claim 1, Antonucci et al. disclose, in Fig. 35, a device comprising a fastener plug **13** including a plug portion **20'** and a fastener portion **24**. The plug portion **20'** defines an end cap **20'** and at least one disc **28** spaced apart from the end cap **20'**. The fastener portion **24** defines a flexible extension member **27** extending outwardly from the end cap **20'**. The extension member **27** includes a projecting member **26'**. Given the structure of Antonucci et al. above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar, and the projection member can be adapted for operatively engaging the aperture in the sidewall of the bar.

Regarding claim 2, the end cap **20'** defines a peripheral edge **B1** and a flat surface edge **B2** along the peripheral edge **B1**. Note, the claims are written with a broad breadth that Antonucci et al. reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **A1** connects the disc **28** to the end cap **20'** (see marked-up attachment provided in the Office action mailed on 7/14/2005).

Regarding claim 4, the disc **28** is a plurality of discs **28** spaced apart from the end cap **20'**.

Regarding claim 5, the extension member **27** extends upwardly from the end cap **20'**.

Regarding claim 6, the extension member **27** extends across the discs **28**.

Regarding claim 7, the discs **28** define a flat surface edge **A2** (see marked-up attachment provided in last Office action; Figure 40).

Regarding claim 8, the projection member **26'** defines an inclined surface **A2** (see Figure 41).

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Popsys, 5,496,141.

Regarding claim 1, Popsys discloses, in Fig. 2, a device comprising a fastener plug 10 including a plug portion 12 and a fastener portion 18. The plug portion 12 defines an end cap 12 and at least one 22 spaced apart from the end cap 12. The fastener portion 18 defines a flexible extension member 14 extending outwardly from the end cap 12. The extension member 14 includes a projecting member 16. Given the structure of Popsys above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap 12 defines a peripheral edge and a flat surface edge along the peripheral edge. Note, the claims are written with a broad breadth that Popsys reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 4, the one disc 22 is a plurality of discs 20,22 spaced apart from the end cap 12.

Regarding claim 5, the extension member 14 extends upwardly from the end cap 12.

Claims 1-3, 5, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Kwilosz, 6,799,931.

Regarding claim 1, Kwilosz disclose, in Fig. 5, a device comprising a fastener plug **10** including a plug portion **200** and a fastener portion **14**. The plug portion **200** defines an end cap **200** and at least one disc **12** spaced apart from the end cap **200**. The fastener portion **14** defines a flexible extension member **22** extending outwardly from the end cap **200**. The extension member **22** includes a projecting member **54**. Given the structure of Kwilosz above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap **200** defines a peripheral edge and a flat surface edge along the peripheral edge. Note, the claims are written with a broad breadth that Kwilosz reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **30** connects the disc **12** to the end cap **200**.

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Regarding claim 5, the extension member **22** extends upwardly from the end cap **200**.

Regarding claim 8, the projection member **54** defines an inclined surface (the ramp).

***Allowable Subject Matter***

Claims 9 and 11-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 9, the prior art of record does not disclose or suggest a device comprising a fastener plug including an end cap defining a flat truncated surface along a peripheral edge; there is no motivation absent applicant's own disclosure to modify Popsys, 5,496,141, Kwilosz, 6,799,931, Antonucci et al., 6,119,306, and Gieling et al., 5,144,780, because there is no requirement or need for a flat truncated surface to permit water or waste to drain out of a trashcan bar 20 when used with the device;

regarding claims 11-14, these claims directly or indirectly depend from claim 9;

regarding claim 15, the prior art of record does not disclose or suggest a device comprising an extension member extending across a flat surface edge of a plurality of discs; there is no motivation absent applicant's own disclosure to modify the closest



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prior art to Popsys, 5,496,141, and Antonucci et al., 6,119,306, because the extension member in Popsys extends perpendicular to the device, and the discs in Antonucci et al. do not contain any flat surface edge to allow the extension member to be across the flat surface edge; and,

regarding claim 16, the prior art of record does not disclose or suggest a device comprising an aperture-engaging member defining opposing columns joined together by a rib; there is no motivation absent applicant's own disclosure to modify the references because no one teaches the subject matter to facilitate insertion and removal of the aperture-engaging member within and out of an opening 44 formed in a trashcan bar.

### ***Response to Arguments***

Applicants' arguments filed August 4, 2006 have been fully considered but they are not persuasive.

Applicants argue that the language "adapted for" clause states a condition that is material to patentability. In response, note that the clause merely recites the intended purpose of the projection member. It should be noted that patentability is based on the structural differences of the device and not how it operates or how it is intended to be employed. Accordingly, the structure, i.e., the projecting member, described in the references meets the claim and inherently can be adapted as purportedly recited.

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Applicants have not shown that such projection member in the references cannot be adapted as defined in the claim.

With regards to claim 21, note the withdrawal of this claim on page 2.

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Obitts, 6,079,894, Araki, 6,659,411, Blankenburg, 4,898,493, and Mair, 4,956,900 show a similar device.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-282-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.G.*

E.G.

October 11, 2006

*Daniel P Stodola*

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